

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

ZIRCONIA PUBLISHING, INC., a
Colorado corporation,

Plaintiff,

v.

JOHN DOE 1 A/K/A “JOANNAH
CLARKSON”, AND JOHN DOES 2-10,
individuals or unknown entities.

Defendants.

NO.: 2:15-cv-598

COMPLAINT

JURY DEMAND

Zirconia Publishing, Inc. (“Plaintiff”) asserts for its Complaint against John Does 1-10 (“Defendants”) as follows:

I. INTRODUCTION

1. This action arises from the Defendants’ transmission of a Digital Millennium Copyright Act (“DMCA”) takedown notice (the “Notice”), pursuant to 17 U.S.C. § 512, to Amazon.com, Inc. (“Amazon”) in connection with the publication of the novel A Baby for My Billionaire Stepbrother (the “Book”) by Plaintiff Zirconia Publishing, Inc.’s (“Zirconia”).

2. Defendants’ Notice falsely claimed that Defendant “Joannah Clarkson” – which on

1 information and belief Zirconia alleges to be a pseudonym – owned the U.S. copyright in the
2 Book.

3 3. Defendants’ Notice falsely claimed that Zirconia was infringing “Clarkson’s”
4 copyright by causing the Book to be published via Amazon’s Kindle publishing service for
5 electronic books.

6 4. Zirconia is duly authorized by the author of the Book – who assigned all copyright in
7 and to the Book to Zirconia – to publish the Book on Amazon.

8 5. Defendants have no rights in the Book. Defendants falsely claimed in their Notice
9 that they did have such rights. Defendants’ fraudulent Notice caused Amazon to cease
10 publication of the Book, which resulted in considerable damage to Zirconia.

11 6. Zirconia has filed this action to stop Defendants’ tortious interference with Zirconia’s
12 publication contract with Amazon, as well as Defendants’ unlawful misrepresentations in
13 violation of federal copyright law, and to obtain compensation for the harm Defendants have
14 caused Zirconia.

15 II. PARTIES

16 7. Zirconia Publishing, Inc. is a Colorado corporation with its principal place of
17 business at 12801 Lafayette Street #K308, Thornton, Colorado 80241.

18 8. Defendant John Doe 1, also known as “Joannah Clarkson”, is an individual whose
19 real identity is unknown to Zirconia at this time. On information and belief, in Defendants’
20 fraudulent Notice to Amazon, “Clarkson” is identified as the owner of the copyright in the Book.

21 9. Defendants John Does 2-10 are individuals whose real identities are unknown to
22 Zirconia at this time. On information and belief, Zirconia alleges that all Defendants worked in
23 connection with each other to perform the wrongful actions alleged in this complaint, that each
24 Defendant is an agent of all other Defendants, and that all Defendants are jointly and severally
25 liable for the wrongful actions alleged herein.

26 10. Defendants’ wrongful Notice was sent to Amazon, which is located in Seattle,

1 Washington, within this judicial district.

2 **III. JURISDICTION AND VENUE**

3 11. This Court has subject-matter jurisdiction over Zirconia's federal claims pursuant to
4 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (copyright claims).

5 12. This Court has subject-matter jurisdiction over Zirconia's state law claims pursuant
6 to 28 U.S.C. § 1367 (supplemental jurisdiction) because the claims alleged under state law are so
7 related to claims in this action over which this Court has original jurisdiction that they form part
8 of the same case and controversy under Article III of the United States Constitution.

9 13. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part
10 of the events giving rise to Zirconia's claims occurred in this district.

11 **IV. FACTS**

12 14. Zirconia publishes romance novels, including the Book and A Baby for My
13 Billionaire Stepbrother 2, A Baby for My Billionaire Stepbrother 3, A Baby for My Billionaire
14 Stepbrother 4, and A Baby for My Billionaire Stepbrother 5 (collectively, including the Book,
15 the "Series").

16 15. Zirconia publishes the Series, including the Book, via Amazon's Kindle Direct
17 Publishing ("KDP") service. Zirconia is bound by Amazon's Kindle Direct Publishing Terms of
18 Service (the "KDP Terms") with respect to the publication of each title on KDP, including the
19 Book.

20 16. At Section 5.8(c), Amazon's KDP Terms state as follows: "You represent and
21 warrant that ... neither the exercise of the rights authorized under this Agreement nor any
22 materials embodied in the content nor its sale or distribution as authorized in this Agreement will
23 violate or infringe upon the intellectual property, proprietary or other rights of any person or
24 entity, including, without limitation, contractual rights, copyrights, trademarks, common law
25 rights, rights of publicity, or privacy, or moral rights, or contain defamatory material or violate
26 any laws or regulations of any jurisdiction".

1 17. Zirconia owns all rights in the Book or is otherwise authorized to publish the Book
2 via Amazon's KDP service. No materials embodied in the content of the Book violate or infringe
3 any third party's rights, nor do the sale or distribution of the Book violate or infringe such rights.

4 18. On or around March 10, 2015, Defendants sent a fraudulent DMCA takedown notice
5 to Amazon, requesting that Amazon cease publication of the Book.

6 19. On March 10, 2015, Zirconia's agent received an email from Amazon, which read, in
7 relevant part:

8 "Hello,

9 We've received a notice from a third party claiming that the distribution of the
10 following title you submitted for sale through the Amazon Kindle Store may not be
11 properly authorized by the appropriate rights holder:

12 B00TJ0LKVU A Baby for My Billionaire Stepbrother by Cassandra Zara

13 As a result, we've suspended sales of this title, pending further investigation.
14 Below is the contact information of the third party who claims you infringed its
15 rights. We expect that you'll compensate this party appropriately for any infringing
16 copies sold:

17 Joannah Clarkson
18 joannah.clarkson@gmail.com

19 We take violations of intellectual property rights very seriously. The submission of
20 titles that violate third-party rights is a violation of our agreement and may lead to
21 suspension or termination of your account, among other remedies such as access to
22 optional KDP services being revoked. Please ensure that you own sufficient rights for
23 all your ebook titles to publish them on the Kindle."

24 20. On information and belief, Zirconia believes that the name "Joannah Clarkson" is
25 fictitious and the Notice was sent by a competitor or someone similarly situated.

26 21. After Amazon ceased publication of the Book, Zirconia contacted Amazon and was
able to resume publication of the Book via KDP. However, the takedown resulting from
Defendants' Notice resulted in significant adverse economic consequences to Zirconia, including
lost sales, ratings, and algorithm-based suggestions. Since the Book is the first novel in the

1 Series, and most readers will not purchase sequels until they have read the first book in a series,
2 Defendants' wrongful notice caused a decrease in Zirconia's sales of multiple books.

3 22. On information and belief, Defendants knowingly and willfully misrepresented
4 "Clarkson's" alleged rights in the Book to Amazon — when in truth "Clarkson" has no rights in
5 the Book — and Defendants deliberately caused Amazon to cease publication of the Book,
6 thereby causing damage to Zirconia.

7 **V. CLAIMS**

8 **FIRST CAUSE OF ACTION**

9 **TORTIOUS INTERFERENCE WITH CONTRACT**

10 23. Zirconia realleges and incorporates by reference the allegations in paragraphs 1
11 through 22 above as if fully set forth herein.

12 24. Zirconia contracts with Amazon for publication of the Book.

13 25. Defendants sent their Notice to Amazon "claiming that the distribution of [the Book
14 which Zirconia] submitted for sale through the Amazon Kindle Store may not be properly
15 authorized by the appropriate rights holder". This indicates that Defendants knew that Zirconia
16 had a contractual relationship with Amazon for the publication of the Book.

17 26. Defendants' Notice to Amazon was designed to cause Amazon to terminate
18 publication of the Book by misrepresenting to Amazon that its publication of the Book was not
19 properly authorized by the appropriate rights holder.

20 27. Defendants' Notice to Amazon actually caused Amazon to cease publication of the
21 Book, which resulted in damages to Zirconia, including lost sales, ratings, and algorithm-based
22 suggestions.

23 28. Because of Defendants' previous misrepresentations to Amazon, Zirconia is
24 concerned that Defendants will further disrupt, or attempt to disrupt, publication of the Book or
25 other books in the Series.

26 29. Zirconia has been damaged, and will continue to be damaged, by Defendants'

1 unlawful conduct in an amount to be proven at trial.

2 30. In addition, Defendants' conduct described herein has caused and, if not enjoined
3 will continue to cause, irreparable damage to the business, positive reputation and goodwill of
4 Zirconia, which cannot be adequately compensated solely by monetary damages. Zirconia
5 therefore has no adequate remedy at law and seeks permanent injunctive relief.

6 **SECOND CAUSE OF ACTION**

7 **17 U.S.C. 512(f) MISREPRESENTATION**

8 31. Zirconia realleges and incorporates by reference the allegations in paragraphs 1
9 through 30 above as if fully set forth herein.

10 32. On information and belief, Zirconia alleges that Defendants knew that Zirconia's
11 publication of the Book was not an infringement of copyright.

12 33. Defendants' Notice to Amazon regarding the Book was issued under the authority of
13 17 U.S.C. § 512.

14 34. In their Notice, Defendants knowingly and materially misrepresented that Zirconia
15 could be liable under U.S. copyright law for publishing the Book — and thereby infringing
16 Defendants' purported copyright in the Book.

17 35. As a result of Defendants' Notice, Amazon ceased publication of the Book, which
18 caused considerable damage to Zirconia.

19 36. Zirconia has been and will continue to be irreparably injured because of Defendants'
20 wrongful use of DMCA takedown procedure in violation of the Copyright Act. Such irreparable
21 damage will continue unless Defendants' unlawful acts are enjoined during the pendency of this
22 action and thereafter.

23 **VI. JURY DEMAND**

24 37. Pursuant to Federal Rule of Civil Procedure 38(b), Zirconia demands a trial by jury
25 as to all issues so triable in this action.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff Zirconia Publishing, Inc. prays for the following relief:

1. A preliminary injunction and permanent injunction enjoining and restraining Defendants, their principals, officers, agents, servants, employees and all persons in active concert or participation with them, during the pendency of this action and thereafter perpetually from:

a. Filing any lawsuits against Zirconia or any other party for alleged copyright infringement based on Zirconia's publication of the Book;

b. Sending any DMCA takedown notices requesting removal of the Book, or any part thereof, from any third-party website;

c. Otherwise interfering in any way with Zirconia's lawful publication of the Book; and

d. Inducing, encouraging, enabling or assisting any third party to engage in the acts prohibited above;

2. An award of damages to Zirconia for intentional interference with contractual relations, including without limitation damages for lost sales;

3. An award of Zirconia's costs of suit and reasonable attorneys' fees pursuant to 17 U.S.C. § 512(f), and as otherwise permitted by law;

4. An award of prejudgment and post-judgment interest; and

5. Such further and other relief as the Court deems just and proper.

Respectfully submitted, and dated this 15th day of April, 2015.

Focal PLLC

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